IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

CIVIL APPLICATION NO. 57 OF 2007
IN
WRIT PETITION NO. 2913 OF 2006

President/Chairman,
Jogeshwari Kelvani Mandal & ors..... Petitioner

versus

Ranjan M. Parikh and others ..... Respondent.

Mr. S.J. Panicker i/b Mr. Ashok Sathe for the applicant.
Mr. M.P.Vashi i/b M/s. M.P.Vashi and Associates for Respondent no.1.

CORAM; A.P. DESHPANDE, J.
DATED; 2ND MARCH, 2007

P.C.;

1. The learned Single Judge of this court by order dated 28th August 2006 disposed of the writ petition filed by the management by granting liberty to conduct a denovo enquiry into the charges levelled against the delinquent employee as per charge sheet dated 24-2-1998 by constituting a fresh enquiry committee as per the rules. It was further directed that the enquiry shall be completed by 31-12-2006. On account of failure on the part of the management to complete the enquiry before the deadline, an application seems to have been moved for extension of time and by order dated 14-12-2006 the time came to be extended to

15-1-2007 for completion of the enquiry. The enquiry has not been completed till date and the present civil application has been filed seeking extension of time for a period of about four weeks to complete the enquiry.

2. The learned counsel for the applicant has put forth two fold reasons on account of which, according to him, the enquiry could not be completed within the time. The reason (1) is the school was closed during Christmas vacation from 25-12-2006 to 1-1- 2007 and the employee was not ready and willing to participate in the enquiry proceedings during the said period. The next reason put forth is filing of writ petition before the Division Bench. The employee obtained stay of the enquiry proceedings and stay was in operation from 19-12-2006 to 22-12-2006. The learned counsel categorically submits that the enquiry has reached the stage as is contemplated by Rule 37 (4) of MEPS Rules and the convenor of the enquiry committee has forwarded to the employee the summary of the proceedings and the copies of the statement of witnesses by registered post acknowledgement due and has called upon the employee to tender further extension. It is the submission of the counsel for the applicant that, as the extended period for completion of enquiry has expired on 15th Jan. 2007 further extension of time may be given. 3. Per

contra the learned counsel for the non-applicant/respondent objects to the extension of time by contending that in the first place convenor of the enquiry committee is the chairman of the society against whom the employee has filed criminal case and he is also facing contempt proceeding, notices has been issued in the contempt proceedings, hence he has a bias. It is then submitted that though the learned Single Judge permitted denovo enquiry, it did not disturb the order of reinstatement of the employee. It is submitted that the employee is being harassed by dragging the enquiry further. Lastly the objection is raised that though on 22-12-2006 the enquiry was stayed, as many as three witnesses has been examined by the management, who could not have been examined on the said date. Putting forth these objections, the application is opposed. Lastly it is submitted that if reinstatement has not been disturbed by the order passed by the learned /single Judge, the management was obliged to pay full salary from March 2006 till date to the employee, but the same has not been paid and a meagre amount of Rs. 83,000/- is paid. According to the counsel, the balance amount would be more than Rs. 2 lacs. A chart in regard to the arrears is also placed on record.

4. I have no iota of doubt that if the order of reinstatement is not disturbed by the order passed by

the Single Judge, the employee shall be deemed to be notionally in service of the management and is entitled to receive the salary from March 2006 till date. Roughly calculating the arrears, the same works out in the sum of Rs. 2 lacs. (after deducting the payment made by the management to the employee). Hence in the first place the employee needs to be paid the sum of Rs. 2 lacs by the management.

5. There are sufficient reasons for failure on the part of the management to complete the enquiry within the stipulated time frame and hence I am inclined to extend the time by a period of four weeks. However I make it clear that I am neither called upon to examine the question in regard to the legality of the composition of the enquiry committee and/or the legality of recording evidence of witnesses on 22nd. Hence I have not gone into those issues. All questions in regard to the legality of the enquiry are left open to be agitated before appropriate forum in appropriate proceedings.

6. In the result, the Civil Application is allowed. Time to complete the enquiry is extended by way of last chance by four weeks, subject to the condition that the management pays a sum of Rs. 2 lacs to the employee within a period of two weeks from today. No further extension shall be granted.

7. Needless to mention that the said payment of Rs. 2 lacs can be accepted by the employee without prejudice to the right of the parties. C.A. accordingly is disposed of.

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